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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA,

Plaintiff, Criminal Action  
No. 12-10025-DJC

V.

RONALD E. BROWN,

December 17, 2013  
2:00 p.m.

Defendant.

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TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE DENISE J. CASPER

UNITED STATES DISTRICT COURT  
JOHN J. MOAKLEY U.S. COURTHOUSE  
1 COURTHOUSE WAY  
BOSTON, MA 02210

DEBRA M. JOYCE, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
1 Courthouse Way, Room 5204  
Boston, MA 02210  
joycedebra@gmail.com

1 APPEARANCES:

2 FOR THE GOVERNMENT:

3 KENNETH G. SHINE, ESQ.  
4 United States Attorney's Office  
5 Suite 9200  
6 1 Courthouse Way  
7 Boston, MA 02210  
8 617-748-3686

9 FOR THE DEFENDANT:

10 MICHAEL C. ANDREWS, ESQ.  
11 Law Offices of Michael C. Andrews  
12 1 Commercial Wharf West  
13 Boston, MA 02110  
14 617-951-0072  
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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Denise J. Casper, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on December 17, 2013.

The defendant, Ronald E. Brown, is present with counsel. The Assistant U.S. Attorneys is present.)

THE CLERK: Criminal action 12-10025, United States v. Ronald Brown.

Would counsel please state your name for the record.

MR. SHINE: Your Honor, good afternoon. Kenneth Shine, I appear on behalf of the United States of America.

THE COURT: Good afternoon, counsel.

MR. ANDREWS: Good afternoon, your Honor. Michael Andrews on behalf of Mr. Brown.

THE COURT: Good afternoon, Mr. Andrews.

Good afternoon, Mr. Brown.

THE DEFENDANT: Good morning, your Honor.

THE COURT: Counsel, I know we're here for sentencing. Before we begin, I just want to make sure I received and reviewed all of the written materials that the parties wanted me to.

I've received and reviewed the presentence report as revised -- I wrote down July 30th, is that -- that's correct.

1 PROBATION OFFICER: Correct.

2 THE COURT: The defendant's sentencing memo filed  
3 December 10th, and the government's sentencing memo that was  
4 filed December 11th.

5 I think those are all the written materials,  
6 Mr. Shine?

7 MR. SHINE: That's correct, your Honor.

8 THE COURT: Mr. Andrews?

9 MR. ANDREWS: That's correct.

02:01 10 THE COURT: Mr. Andrews, have you had a chance to  
11 review the presentence report and discuss it with Mr. Brown?

12 MR. ANDREWS: I have, your Honor.

13 THE COURT: And as to -- I know there was some  
14 objections, but I don't recall that any of them were in regards  
15 to the factual contents of the PSR, they were to the base  
16 offense level calculation, if I'm recalling correctly.

17 MR. ANDREWS: I believe so, your Honor.

18 THE COURT: And I understand the government didn't  
19 have any objections?

02:02 20 MR. SHINE: No objection to the PSR as drafted.

21 THE COURT: And in terms of the guideline  
22 calculations, Mr. Andrews, do you want to be heard any further  
23 on those objections? I have reviewed them. I think they are  
24 in two parts, one was in regard to the argument I understood  
25 you were reserving as to whether or not the ACC, Armed Career

1 Criminal, predicates needed to be proven and found by the jury,  
2 and I think the other issue was to whether or not the jury was  
3 instructed about the brandishing enhancement.

4 MR. ANDREWS: That's correct, your Honor. And I set  
5 those forth in my objections to the presentence report.

6 The first objection I reiterated and pleaded in my  
7 sentencing memorandum, so your Honor is correct, I'm attempting  
8 to preserve the record. As long as you tell me that I'm not  
9 waiving anything by not engaging in further argument, which I  
02:03 10 don't believe I am, I'll rely on my filings.

11 THE COURT: Okay.

12 And that's true as to the second issue.

13 Counsel, just so the record is clear, I have  
14 considered both of those arguments, and I think, Mr. Andrews,  
15 as your papers recognize, the Almendarez-Torres, 523 U.S. 224  
16 (1998) is still good law, and I do believe I'm still bound by  
17 it. The Alleyne case, which came down more recently, very  
18 explicitly didn't overrule it, and I think I'm bound by that  
19 Supreme Court ruling, or the state of the law at the moment,  
02:04 20 counsel.

21 In regards to the 924(c) brandishing argument, I  
22 didn't -- I haven't had a chance to look at the transcript, but  
23 I did, counsel, look at the jury instructions that I read to  
24 the jury, and I did explicitly instruct them that one of the  
25 elements the government had to prove and they had to find was

1 that Mr. Brown had intentionally brandished a firearm. I have  
2 to presume that the jury followed my instructions, so I think  
3 that's appropriately before me for the enhancement, the  
4 84-month enhancement.

5 Counsel, anything further about the base offense level  
6 calculations?

7 MR. SHINE: No. The government is in agreement with  
8 the U.S. Probation Department's calculations.

9 THE COURT: And, Mr. Andrews, I understand your  
02:05 10 position reserving your objections.

11 MR. ANDREWS: Yes, your Honor. I believe the  
12 additional objections just had to do with recalculation.

13 THE COURT: Right, related to those two issues.

14 MR. ANDREWS: Exactly, your Honor.

15 THE COURT: Counsel, with all of that said and based  
16 on what I've said in response to the specific objections, I  
17 just note, and I adopt Probation's calculation that the base  
18 offense level, due to operation of the Armed Career Criminal  
19 provision, 4B1.4, is 33 with no adjustment for acceptance; and  
02:05 20 in terms of the Criminal History Category, other than the  
21 objection to the enhanced -- the enhancement based on the Armed  
22 Career Criminal, I don't think there were any other objections,  
23 and that Criminal History Category, which would otherwise be  
24 II, is increased to Category IV, again, under the ACC  
25 provision.

1 With that said, the advisory guideline sentencing  
2 range is 188 to 235 months; and on-and-after 84 months on what  
3 I believe is Count Two, the 924(c) charge; the supervised  
4 release range for Count One is one to three years, for Counts  
5 Two and Three it's two years to five years; and, counsel, the  
6 fine range is \$17,500 to \$175,000; and restitution, I think, is  
7 not an issue here, Mr. Shine, because I believe the money was  
8 recovered.

9 MR. SHINE: That's correct, your Honor. The \$264  
02:07 10 (sic.) was taken and was recovered at the scene.

11 THE COURT: Okay.

12 The special assessment here is a total of \$300, \$100  
13 for each count.

14 Mr. Shine, I'll hear the government's recommendation.

15 MR. SHINE: It's troubling that we're here today on  
16 this particular case with this individual, Mr. Ronald Brown.  
17 And unfortunately, the reason we're here today is because  
18 Mr. Brown has made us here.

19 This case starts as a result of a robbery of \$664. On  
02:07 20 October 31, 2011, Mr. Brown and another individual, armed with  
21 loaded semiautomatic pistols, made a decision -- this wasn't  
22 some sort of random act, this wasn't some Devil May Care prank,  
23 this wasn't just a drug crazed rushing in, doing something for  
24 the sake of it -- armed with loaded semiautomatic weapons, a  
25 roll of duct tape, which was secreted inside a black leather

1 bag, they entered the MetroPCS in Codman Square. They didn't  
2 go there to buy phones, they went there to rob the place.

3 The clerk, young woman, who was present, would have  
4 submitted without the slightest show of force. The Court had a  
5 chance during motions to suppress and during trial to observe  
6 her size, her stature, her complete fear. They didn't do that.

7 Now, they'll try to make it out to be that this was  
8 some random act, you know, some casual sort of happening. You  
9 don't walk around Dorchester with a roll of duct tape; you  
02:09 10 don't walk around Dorchester with two semiautomatic firearms;  
11 you don't walk around Dorchester with your identity hidden  
12 wearing two jackets each, hats, sunglasses, scarf to hide their  
13 faces; you don't walk around Dorchester with work gloves on;  
14 and you don't walk around Dorchester with Scotch tape all over  
15 your fingers, obscuring your fingerprints. You walk around  
16 with that situation when you decide you're going to do  
17 something, and that day they decided they were going to rob the  
18 MetroPCS store.

19 They walked into the store. The Court had the ability  
02:09 20 to watch, as did the jury, the robbery. They walked in.

21 Mr. Lynch Arthur stood to the right, Mr. Ronald Brown, the  
22 defendant, walked towards the clerk and distracted her by  
23 feigning interest in a phone. As he did that, which was all  
24 captured on video, Lynch Arthur walked around back, he  
25 displayed a firearm, the victim went back, went into a back



1 room, Brown came around. Once in back, we observed on video  
2 both of them pulling the roll of duct tape out of the bag which  
3 they were carrying and duct-taping her hands and her feet, and  
4 then duct-taping her mouth and placing her on the ground as  
5 they started to ransack the store.

6 \$664 and some change is what they got.

7 They left her lying on the ground, a gutless act. As  
8 they left, the bell rang as they went out the front door. We  
9 observed the clerk getting up, removing the tape, waiting a  
02:10 10 second or two, composing herself, and then I think, which was  
11 perhaps the most telling part of this entire trial, was I  
12 observed her hopping because she couldn't get the damn tape off  
13 her ankles to go lock the door so they wouldn't come back and  
14 get her again. We observed her hopping to a door as she was  
15 laid on the ground duct-taped.

16 In a short period of time, the individuals were  
17 located, individuals that fit the description. Now, these  
18 individuals were smart enough to have worn extra clothing,  
19 dropped the clothing along the way, an opportunity to take  
02:11 20 their guns, take the \$664 and some change, and the duct tape,  
21 put it in a bag and then dump that into a dumpster, a little  
22 blue recycle dumpster, along the way and come walking along  
23 like nothing happened. They were a hundred yards from the  
24 Codman Square train station on a sunny afternoon in Dorchester.

25 Officer Golden, who is here today, observed them, he

1 talked to them, noticed something little awry. He kept on  
2 watching Mr. Brown picking something, peeling something from  
3 his hands, unsure what he was doing. We know now that Brown  
4 was taking the Scotch tape off his fingers. He used the Scotch  
5 tape to make sure there were no fingerprints, and of course,  
6 the Court knows from the trial there were no fingerprints  
7 located at the scene of the crime, because Brown had Scotch  
8 tape on his fingers. The other individual, Mr. Lynch Arthur,  
9 had on white gloves.

02:12 10 \$664. I read the PSR. I've read it time and time  
11 again. I started looking, I said, What would drive somebody to  
12 do this? What would be the motivation? I can tell you, Judge,  
13 he seems like a good man. He's had some problems in his early  
14 life, he had five convictions early in his life, 1993 a drug  
15 conviction, distribution of heroin; 1994, distribution of  
16 heroin; another one in 1994, distribution of heroin; 1995,  
17 another distribution of heroin, suggests to me that over the  
18 short period of time he had a problem with heroin. He did  
19 short stints of jail time. He then had a more serious crime in  
02:12 20 2000 where he was given a lengthy sentence for assault and  
21 battery with a dangerous weapon. So between that period of  
22 time, from '94 to 2000, pardon the expression, he was off the  
23 radar, seemed to be doing something with his life. 2000 he got  
24 a big hit, he went to jail. He got out of jail, and from that  
25 point on, I don't see him. I see that he has a job, I find out

1 that he has a good job. I find out that he's transporting  
2 artwork for the company as a secured driver. He has a CDL  
3 license. He seems to be doing everything right. He seems to  
4 be pulling himself up and trying to turn his life around and  
5 straighten it out. I don't know what caused this. I don't  
6 know what caused him that day to decide to do this.

7 We do know that while he was out in the Midwest, he  
8 stopped at his brother's house. We do know, because his  
9 brother testified, he purchased three firearms. We recovered  
02:13 10 two of them, we don't know where the other one is. Why he  
11 would go out to Arizona to buy firearms, I don't know, but  
12 those are the firearms he purchased in Arizona, his brother  
13 did, that he used during this robbery.

14 I don't know what to tell you, Judge. I know that the  
15 public at this point -- at a certain point you say, enough is  
16 enough, we can't do any more. He's had every opportunity in  
17 the world to help himself out, and this is the path he chose.  
18 So we're not here over \$664. We're here over the decision that  
19 Ronald Brown made that particular day with Mr. Lynch Arthur to  
02:14 20 rob that store.

21 The impact upon the teller, the clerk, is sizable. We  
22 had a chance to observe her. The impact upon the community,  
23 people with loaded firearms robbing these type of stores. The  
24 public has the right to be safe, the public has a right to be  
25 able to go around those areas and not have to deal with the

1 likes of Ronald Brown.

2 With that said, Judge, the advisory guideline range is  
3 272 to 319 months. The maximum penalty is life imprisonment,  
4 and I have every right to stand here before you and suggest to  
5 you that life imprisonment -- I could have filed an enhancement  
6 and it would have been a mandatory life imprisonment in this  
7 particular case, we chose not to. We chose to think that there  
8 would be some value, some redeeming value, to him. And I still  
9 hold that out. Unfortunately, there's going to be a very  
02:15 10 lengthy extended period of time that he needs to be  
11 incarcerated. He needs to understand that this behavior cannot  
12 be accepted. It's not accepted today, and it's not going to  
13 been accepted between 20 and 30 years when he is released.  
14 He's 40 years old. A guideline recommendation of 272 to 319  
15 months. The government went mid-range on the guidelines at a  
16 sentence of 300 months. It's 25 years. He'll be 65 years old  
17 when he gets out, hopefully his life will be in order.

18 THE COURT: Counsel, you know, I'm going to ask you  
19 what is perhaps the harder question to ask here, and I'm going  
02:15 20 to hear from Mr. Andrews in a moment, but what I understand  
21 from the defense memo is that the defense is asking me to  
22 impose not an unsubstantial sentence, which reflects the  
23 minimum mandatory and the on-and-after 84 months, so 264  
24 months, and I think -- I don't know, Mr. Shine, if I've asked  
25 this question of you in the past, but I've certainly asked it

1 of your colleagues. You recognize that Mr. Brown is 40. Under  
2 either scenario, right, he's either going to be imprisoned for  
3 22 years or 25. So what in the government's estimation -- and  
4 I think it's fair to say the Court struggles with this issue --  
5 what is the difference between sentencing him for over two  
6 decades so that he's in prison until he's 62 or imprisoning him  
7 for 25 years until he's 65?

8 MR. SHINE: I'm not going to suggest we're punishing  
9 him because he went to trial, that would be wrong, I would not  
02:17 10 do that.

11 I think there are facts in this case which warrant a  
12 sentence which is a guideline sentence. As this Court knows, I  
13 am a guidelines person. I believe the guidelines are fair and  
14 accurate. His sentence is crafted on his personal criminal  
15 behavior. It is driven by a minimum mandatory sentence, those  
16 are outside our hands, but the pure guidelines -- and the other  
17 individual, Mr. Lynch Arthur, I also asked for a guideline  
18 sentence. He had as severe a record but did not have the  
19 minimum mandatory Armed Career Act, and I asked for a sentence  
02:17 20 which reflected a guideline sentence on him. I think the Court  
21 sentenced him to 228 months, and I think his guideline ranges  
22 were just shy of that. I think he was 151, plus 84. So I  
23 think the Court sentenced him ten months below his advisory  
24 guidelines. He pled guilty, he got the benefit of the three  
25 points. Mr. Brown went to trial, Mr. Brown had a lengthy,

1 protracted, and I might say very intense three-day motion to  
2 suppress hearing. Following the motion to suppress with the  
3 overwhelming evidence the government provided, we went to  
4 trial. The trial lasted five days, the jury was out less than  
5 a half an hour by all accounts. It was a strong, strong  
6 government case. The evidence was overwhelming.

7 I just -- I believe a sentence within the guideline  
8 range is an appropriate sentence in this case. I don't see  
9 that Mr. Brown warrants a departure, not on the facts of this  
02:18 10 case and not on his criminal history.

11 THE COURT: And, counsel, in terms of -- I  
12 understood -- just as a technical matter, I understood the  
13 recommendation of 300 months to essentially be 216 months, plus  
14 on-and-after 84.

15 MR. SHINE: Plus on-and-after 84, yes, your Honor.

16 THE COURT: And your -- do you have any position as to  
17 supervised release?

18 MR. SHINE: We would ask, as we did in the other case,  
19 for a period of five years of supervised release, the maximum  
02:19 20 permissible under the statute.

21 I'm not going to ask for a fine because I do not  
22 believe Mr. Brown would be in any position today or tomorrow or  
23 22 years from now to be in position to pay a fine.

24 I would, of course, ask for the \$300 mandatory special  
25 assessment.

1 THE COURT: Okay.

2 MR. SHINE: Thank you.

3 THE COURT: Okay.

4 Mr. Andrews.

5 MR. ANDREWS: Thank you, your Honor.

6 Your Honor asked a question of the government: What's  
7 the difference between 22 years and 25? You know, it's  
8 difficult for me to stand here ask the Court to sentence my  
9 client to 22 years. I'm not going to ask you to sentence --  
02:19 10 I'm going to ask you to sentence him to the lowest possible  
11 sentence that you're legally -- lowest legal sentence.

12 THE COURT: And I understand that.

13 MR. ANDREWS: But my brother's answer was that, you  
14 know, what's the difference was basically he said he believes  
15 in the guidelines, which is in any other words a rejection of  
16 principle of individualized sentencing and a rejection of any  
17 analysis under the 3553(a) factors, though the Court is bound  
18 to do so.

19 Under the current sentencing structure, sentences must  
02:20 20 be sufficient, but not greater than necessary. An analysis of  
21 3553, we're looking to punish Mr. Brown for what happened.  
22 Twenty-two years is an extraordinary punishment. Deterrence,  
23 both general and specific, certainly specific deterrence as to  
24 Mr. Brown and certainly general deterrence, a far harsher  
25 sentence than anyone prosecuted in the state system would

1 receive for a similar crime. And it sends a message -- sending  
2 messages is one of the goals of sentencing. It certainly sends  
3 an extremely strong message. As a matter of fact, the Court  
4 should look at protecting the public. Mr. Brown's  
5 incarceration for to 22 years will certainly protect the public  
6 for a very long time. We're talking about a sentence that when  
7 Mr. Brown is released, I will be 75 years old. That seems a  
8 very long time, if I'm so lucky to be here, it seems like a  
9 very long time from now.

02:21 10 My brother talked about having to go through trial.  
11 Without getting into particulars, we engaged in repeated plea  
12 negotiations that were unfruitful.

13 My brother mentioned his criminal history. The ACC  
14 penalty is driven by four drug convictions that occurred --  
15 arrests that occurred between September 1993 and June 1994. So  
16 20 years ago. These are all handled in Roxbury District Court,  
17 these were all for small amounts of heroin during a troubled  
18 period of my client's life, and because of those four  
19 convictions, he is here before you facing this minimum  
02:22 20 mandatory 22 years. But for those four convictions -- and I  
21 know you can't take away what's happened -- but for those four  
22 convictions, his guidelines, he's in criminal history III, but  
23 his crime, the guidelines would be 51 to 63 months with a  
24 seven-year or 84-month on-and-after sentence, his guidelines  
25 would be 135 to 147 months. So those four petty drug



1 convictions, there's nothing else to call them, back in 1993 --  
2 when the arrests occurred in 1993, '94, elevate his guideline  
3 sentence from a low end of 135 to a low end of 170, something  
4 in that vicinity, 172.

5 I mentioned in my memo there's -- his co-defendant was  
6 sentenced, I believe, to 19 years. If my memory is correct  
7 from reading the government's memorandum in that case and the  
8 defense memorandum, his guideline range was 262 months. So the  
9 Court varied approximately three years downward on Mr. Lynch  
02:23 10 Arthur. The variance I seek in this case is a modest eight  
11 months or six months, it's 272, I'm -- no, it's eight months,  
12 your Honor, yes, 264.

13 It is a tragedy that I stand here, because Mr. Brown  
14 was employed after he was released. He worked in a pet store,  
15 he worked as a delivery man, then he got his commercial  
16 driver's license, and he was a good employee. He worked for  
17 six, seven years for the art company, handling art and driving  
18 across country. Really in representing him these last two  
19 years, he's polite, he's articulate. He's had absolutely no  
02:24 20 disciplinary problems whatsoever in the two years being held at  
21 Plymouth. And the penalty he faces for this is simply  
22 enormous.

23 Now, I think it is incumbent upon the government, if  
24 they are to argue for an additional three years, to say why 22  
25 years is not sufficient to punish, to deter, to protect, and I

1 don't think it's an argument that can reasonably be made.

2 It was a serious crime, luckily no one was hurt.  
3 There was no violence towards -- no overt physical violence  
4 towards anyone, including the police at the time he was stopped  
5 and the arrest.

6 It is really a very tragic case, your Honor, and I'd  
7 ask the Court to exercise its discretion, understand that a  
8 sentence of 22 years is an absolutely enormous sentence, and it  
9 is a sentence that is sufficient, I believe it's greater than  
02:25 10 necessary, but it's all the Court can do, it's all I can ask  
11 for, and it's certainly a sufficient sentence, and that's what  
12 the law is. Thank you.

13 MR. SHINE: Just briefly, if I might, and then I'll  
14 address the concern that the Court had and Mr. Andrews --

15 THE COURT: And I'll give Mr. Andrews the last word.

16 MR. SHINE: And I do apologize. But this was not just  
17 a random -- and I keep trying to take us out of that -- it's an  
18 unfortunate thing we do, your Honor, in this building is we see  
19 these robberies and so many of them are random, drug-driven,  
02:26 20 crazed, stupid acts. This was not that act. This was a  
21 planned, choreographed act. There was injury done. This young  
22 girl -- and I apologize if I keep repeating that -- was taken  
23 into a back room. All Brown would have to have done is  
24 brandish -- show the firearm. Lift his jacket up, show he had  
25 a weapon on him. All he had to do. She would have given up

1 the cash box. He took her in back, he duct-taped her. He put  
2 her on the ground, he duct-taped her mouth. This is one of the  
3 most violent types of acts, short of discharging a firearm,  
4 that I could imagine. And those guns were racked and loaded.  
5 Those guns could have gone off where we'd be in a completely  
6 different position.

7 I maintain my position because this is not a generic  
8 run-of-the-mill robbery, this is a serious robbery that was  
9 well-planned, well-executed by two individuals, that's why my  
02:27 10 recommendation is what --

11 THE COURT: I understand, Mr. Shine.

12 Mr. Andrews, I'll give you the last word.

13 MR. ANDREWS: I didn't want to bring it up, but when  
14 Mr. Shine started, he said they were making it out to be  
15 random. I didn't say it was random in my sentencing memo, I  
16 didn't use the word "random" when I was speaking to you. I  
17 tried to stick to law, your Honor, which was sufficient, but  
18 not greater than necessary.

19 No one here has made light of the offense. I  
02:27 20 certainly haven't, Mr. Brown hasn't.

21 You know, Mr. Shine in his memo regarding Mr. Lynch  
22 Arthur describes how Mr. Lynch Arthur duct-taped the young  
23 woman. In his memo regarding Mr. Brown he says that at one  
24 point that Mr. Lynch Arthur duct-taped the young woman and then  
25 later on he says that Mr. Brown duct-taped the young woman.

1 Now he's saying that Mr. Brown duct-taped the young woman.  
2 It's really not important because it was a robbery carried out  
3 by two gentlemen, two men. The facts are clear that Mr. Brown  
4 didn't do it, but it was a robbery. No one said it was random.  
5 And he will be severely punished, and the sentence of 22 years  
6 fully reflects the seriousness of the crime, it fully reflects  
7 the flight, terror that the clerk underwent, fully reflects,  
8 you know, that carrying loaded firearms or robbing a store in a  
9 neighborhood cannot be permitted. It addresses all of those.

02:28 10 You know, I know the government likes guidelines, but  
11 we've gotten to a point where district court judges can look at  
12 the individual before them, look at the individual crime, and  
13 make a determination about what is a sufficient sentence, and  
14 22 years -- I don't think it can be reasonably argued that 22  
15 years is not a sufficient and a reasonable sentence.

16 Thank you.

17 THE COURT: Thank you, Mr. Andrews.

18 Mr. Brown, you're not required to, but if you'd like  
19 to address me at this point, I'll hear you.

02:29 20 THE DEFENDANT: Thank you, your Honor.

21 I just want the Court to know I understand that this  
22 case is serious and the gravity of the charges that I've been  
23 convicted of.

24 The clerk is not here, but I still want to apologize  
25 that she shouldn't have went through that. She didn't deserve

1 it. I'm sorry that she did go through that.

2 That's it, your Honor. Thank you.

3 THE COURT: Okay.

4 Counsel, Mr. Brown, I'm going to take a brief recess,  
5 I'll come back to the bench.

6 Thank you.

7 THE CLERK: All rise.

8 (Recess taken.)

9 THE COURT: Thanks to counsel on both sides for your  
02:41 10 recommendations today.

11 Thank you, Mr. Brown, as well, for your statement to  
12 this Court.

13 Mr. Brown, in determination of what a reasonable  
14 sentence would be here, I have and I must consider a number of  
15 factors -- and you can be seated, I'm going to explain my  
16 reasons, and then I'll ask you to stand when I formally impose  
17 sentence -- I have and I must consider a number of factors:  
18 The advisory guideline sentencing range; the nature and  
19 circumstances of your crimes; your personal history and  
02:41 20 characteristics; the need for the sentence to do a number of  
21 things, that is, to reflect the seriousness of the offense,  
22 promote respect for the law, provide just punishment, adequate  
23 deterrence; and avoid unwarranted sentencing disparities; and  
24 all of the factors under Title 18 United States Code 3553(a).

25 Mr. Brown, I want to turn first to the crimes that

1     you've committed in this case; namely, the armed robbery of the  
2     MetroPCS store. I won't rehash all of the events because I  
3     know they're quite clear based on the suppression hearing and  
4     the trial to all of the folks that appear in this courtroom  
5     before the bar today, but on October 31, 2011, you and your  
6     co-defendant, Mr. Arthur, engaged in what I think everyone  
7     agrees was not a random act, but an act that required some  
8     organization, there was some planning involved regarding the  
9     time of the crime, the entry and exit from the store, and the  
02:42 10    tools and weapons that you used to effect this crime. And this  
11    was all to rob a cell phone store. In the course of committing  
12    this crime, the victim, who I heard from during the course of  
13    these proceedings, the victim was duct taped. You brandished a  
14    firearm, and she was put in reasonable fear for her life and  
15    for serious injury. I agree with Mr. Andrews, there's no  
16    physical harm here, I don't think that's disputed at all, but I  
17    certainly think that there was serious psychological harm, and  
18    I think that was reflected in the testimony and the appearance  
19    of the victim in this case here.

02:43 20           Mr. Andrews makes the point, which I think is a fair  
21    one, that this was certainly not the most sophisticated crime  
22    in terms of planning and organization, not one that required or  
23    reflected great planning, and one that certainly did not result  
24    in great money to you, I believe the figure was \$664. But I  
25    think that that argument, in some ways, cuts both ways, and I

1 think this is what Mr. Shine was alluding to in his arguments  
2 on behalf of the government; that is, was this amount of money,  
3 a little over \$600, worth the cost of harm and the risk of harm  
4 to the clerk in this case and to the community of Dorchester?  
5 That is, no matter the result, you willingly participated in a  
6 crime of violence, using a gun, committing that crime not  
7 knowing what the financial yield would be. And I think it's  
8 these facts that reflect a willingness to engage in criminal  
9 acts, including crimes that involve threats of harm, which is  
02:44 10 concerning to this Court, obviously.

11 Mr. Brown, I've also considered your personal history  
12 and background. This is certainly not the first crime you've  
13 committed or been convicted of committing, and sadly, it's not  
14 the first violent felony. Note has been made of your  
15 conviction in 2000 for assault and battery with a dangerous  
16 weapon for which you were sentenced to a number of years in  
17 prison. You were also convicted of four serious drug offenses,  
18 which were reflected in the PSR, each of which involved  
19 possession with intent or distribution of a class A controlled  
02:45 20 substance.

21 I note, as Mr. Andrews noted, the slew of these drug  
22 convictions occurred when you were 20 years old, but I'm  
23 concerned that the prior violent felony was committed sometime  
24 later, when you were 25, and the instant offense, the one that  
25 also involved a threat of violence, occurred, by my

1 calculations, when you were about 38 years old.

2 Mr. Brown, certainly your criminal history is not the  
3 sum total of your background, and I wouldn't suggest otherwise.  
4 I've had a chance to reflect on the information in the PSR and  
5 Mr. Andrews' memo about your personal background. My memory is  
6 you were born and for the most part grew up here in the city,  
7 except for a short time when you were in Florida. You were  
8 raised largely by your mother, and I think in a stable home  
9 environment until your mother's boyfriend, if I recall, came  
02:46 10 into the picture. You witnessed violence in your home. You  
11 were certainly put at a young age in the position of having to  
12 protect her from some of that violence. And when that violence  
13 got to a point when you were living in Florida, your mother had  
14 the presence of mind to send you back to Massachusetts, and she  
15 followed you sometime later. Certainly, this is a difficult  
16 and trying situation for anyone, particularly a child, and I  
17 think that was followed by times when you were bouncing around  
18 from home to home. I think the other positive influence in  
19 your life was your aunt, but even your aunt was assisting you  
02:47 20 while she was living in a rough neighborhood herself.

21 I believe you have several children, if I recall, a  
22 teenage son and two much younger daughters. It seems as if you  
23 don't have contact with your son, I wasn't clear on the contact  
24 you have with your daughters, but I'm aware that you have  
25 several children.



1 I don't believe you have any current issues with drugs  
2 or alcohol, and I note that you did complete your GED, I think,  
3 when you were previously incarcerated. I think that might have  
4 been during some of your -- when you were incarcerated on your  
5 drug charges, the assault and battery charge.

6 You've had some employment, which Mr. Andrews  
7 mentioned, as a driver and delivery person. You have a number  
8 of skills and professional interests, a number of them  
9 creative.

02:48 10 I've considered, Mr. Brown, the advisory guideline  
11 sentencing range, which is 188 to 235 months, plus on-and-after  
12 84 months on a 924(c) charge. You know, as my questions to  
13 Mr. Shine suggested, I think sentences -- any of the sentences  
14 that we've discussed today are steep sentences, ones that I  
15 don't take lightly at all, and I note that your -- the  
16 guideline sentencing range is driven by the Armed Career  
17 Criminal provision that reflects that you've engaged in a  
18 series of crimes over your adult life, including not just the  
19 slew of serious drug offenses that took place in a condensed  
02:49 20 time, but also the more serious assault and battery/dangerous  
21 weapon that happened sometime later.

22 And sadly, I can't say -- and I know what Mr. Andrews,  
23 the arguments Mr. Andrews has made today about not imposing a  
24 sentence that's greater than necessary, and I agree with that  
25 argument, and I've given that much consideration in my sentence

1 today -- but I can't say that the Armed Career Criminal  
2 provision doesn't aptly apply to your situation and your  
3 background, Mr. Brown, given both the timing and the substance  
4 of those previous convictions.

5 Now, you've heard, Mr. Brown, that the government  
6 urges me to impose a much greater sentence of 300 months, which  
7 is the midpoint of the applicable guideline sentencing range.  
8 And, Mr. Shine, I don't think it's outrageous that you're  
9 advocating for that here. And certainly, Mr. Andrews urges me  
02:50 10 to impose the minimum required by law, which amounts to 22  
11 years. Post-Booker, Mr. Andrews is correct, I must make a more  
12 searching inquiry regarding the appropriate sentence, and I  
13 have done so here, and I agree that a serious sentence  
14 reflecting the seriousness of the offense and promoting respect  
15 for the law and both adequate and general deterrence is  
16 appropriate here.

17 And, counsel, based on the arguments on either side,  
18 I've decided, and Mr. Brown, I'm going to impose a sentence  
19 that's much closer to your counsel's recommendation than the  
02:51 20 government's recommendation of 272 months. That reflects 188  
21 months at the very low end of the guideline sentence with the  
22 on-and-after time of 84 months.

23 I don't adopt a sentence reflexively that's within the  
24 guideline range, but I think that, given my review of your  
25 criminal history here and the sequence of it and the increase,

1     sadly, in violence, your willingness to engage in crimes  
2     involving threats of violence, I think it's appropriate to  
3     sentence you to a sentence that does reflect the Armed Career  
4     Criminal provision. But I do so at the low end because I do  
5     agree with Mr. Andrews that it's hard to say what greater  
6     purpose would be served here or what greater sentencing purpose  
7     would be served here by a 25-year sentence than the one that  
8     will be served by a 22-year sentence.

9             I also should just note for the record I'm aware of  
02:52 10     the sentence that I gave to Mr. Arthur. I should note that  
11     that was a sentence that was lower than what the government  
12     recommended, but I also, having thought further about that  
13     sentence, recall that it reflected a variance reflecting some  
14     mitigating factors about Mr. Arthur's background and mental  
15     health that I don't find that are present here. And I think  
16     that I need to, for you, Mr. Brown, make a particularized  
17     determination of the appropriate sentence, and I think 188  
18     months with the 84 months on-and-after is one that does so.

19             For all of those reasons, I do find that this  
02:53 20     sentence, which amounts to 272 months, is a reasonable one,  
21     given consideration of all of the factors, including the nature  
22     of the crime, your personal background, and all of the purposes  
23     of sentencing under 3553(a). I think it's sufficient, but not  
24     greater than necessary, to achieve all of those goals. I  
25     understand that I could depart by more time down to the minimum

1 mandatory, but I choose not to exercise my discretion in that  
2 manner. For all of those reasons, that will be my sentence.

3 Counsel, just for the benefit -- your benefit, I will  
4 just announce the sentence I'm about to impose, which is, as I  
5 said, 188 months on Counts One and Three to be served  
6 concurrently; 84 months on-and-after on Count Two; five years  
7 supervised release, which is on -- Mr. Orze, I think that's on  
8 Counts Two and Three, and on Count One would be concurrent for  
9 three years.

02:54 10 PROBATION OFFICER: Correct.

11 THE COURT: I'm not imposing a fine based on your  
12 inability to pay a fine. No restitution is warranted here, and  
13 I'll also impose the \$300 special assessment.

14 Any objections or any further notes from the  
15 government?

16 MR. SHINE: Nothing from the government, your Honor.  
17 Thank you very much.

18 THE COURT: Mr. Andrews?

19 MR. ANDREWS: No, your Honor.

02:55 20 THE COURT: Mr. Brown, I'm going to ask you to stand  
21 now.

22 Sir, pursuant to the Sentencing Reform Act of 1984 and  
23 having considered the factors enumerated at Title 18, United  
24 States Code, 3553(a), it is the judgment of the Court that  
25 you're hereby committed to the custody of the Bureau of Prisons

1 to be imprisoned for a term of 272 months. This term consists  
2 of 188 months on Counts One and Three to be served  
3 concurrently, and 84 months on Count Two to be served  
4 consecutively to the sentence on Counts One and Three.

5 I make a judicial recommendation that you participate  
6 in educational and vocational training programs to help you  
7 prepare to reenter the workforce upon your release.

8 I also order that upon your release you shall be  
9 placed on a period of supervised release of five years. Again,  
02:56 10 this will be three years -- three years' supervised release on  
11 Count One and five years on Counts Two and Three, all to be run  
12 concurrently.

13 Within 72 hours of release from custody of the Bureau  
14 of Prisons you shall report in person to the district to which  
15 you are released.

16 I'm not imposing a fine, given my finding that you  
17 can't afford to pay a fine.

18 In terms of your supervised release, there's certain  
19 conditions of that release. You shall not commit another  
02:56 20 federal, state, or local crime, and shall not illegally possess  
21 a controlled substance. You shall refrain from any unlawful  
22 use of a controlled substance, and you shall submit to a drug  
23 test within 15 days of your release from imprisonment, and if  
24 Probation thinks it's appropriate, to random drug tests  
25 thereafter, not to exceed 104 drug tests per year.

1           You shall submit to the collection of a DNA sample as  
2           directed by the Probation Office, and you shall comply with all  
3           the standard conditions that will be reflected in the judgement  
4           that I will issue.

5           You are prohibited from possessing a firearm,  
6           destructive device, or other dangerous weapon. And I shall  
7           further order that you pay a special assessment of \$300, which  
8           shall be due immediately.

9           Mr. Orze, anything else in terms of conditions?

02:57 10          PROBATION OFFICER: No, your Honor.

11          THE COURT: That shall be the judgment of the Court.

12          You can be seated.

13          Counsel, anything else other than advising Mr. Brown  
14          of his appellate rights?

15          MR. SHINE: No, your Honor. Thank you.

16          MR. ANDREWS: No, your Honor.

17          THE COURT: Mr. Brown, I need to advise you that you  
18          have a right to appeal your conviction or to appeal your  
19          sentence, particularly if you think the sentence was contrary  
02:58 20          to law.

21                 If you're unable to pay the cost of appeal, you may  
22                 ask permission to have those costs waived and appeal without  
23                 paying.

24                 You must file any notice of appeal within 14 days  
25                 after the entry of judgment. If you request, the clerk of this

1 court will immediately prepare and file a notice of appeal on  
2 your behalf.

3 Do you understand?

4 THE DEFENDANT: Yes, your Honor, I do.

5 THE COURT: Okay.

6 Thank you to counsel.

7 And, Mr. Brown, good luck to you.

8 THE DEFENDANT: Thank you.

9 THE CLERK: All rise.

02:58 10 (Court adjourned at 2:58 p.m.)

11 - - - - -

12 CERTIFICATION

13 I certify that the foregoing is a correct transcript  
14 of the record of proceedings in the above-entitled matter to  
15 the best of my skill and ability.

16  
17  
18  
19 /s/Debra M. Joyce  
20 Debra M. Joyce, RMR, CRR  
Official Court Reporter

February 28, 2014  
Date